

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

RAFAEL ARRIAZA GONZALEZ,	§	
	§	
Petitioner,	§	
	§	Civil Action No. 3:08-CV-0151-D
VS.	§	
	§	
NATHANIEL QUARTERMAN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

**ORDER**

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.\*

One argument that petitioner makes in his objections merits a specific response. He complains that had he filed a state habeas petition before the mandate issued in connection with the affirmance on his direct appeal, the petition would have been subject to dismissal. But as the magistrate judge correctly explains, the AEDPA calculation is not based on the date the mandate issued. And even if petitioner had desired to await the issuance of the mandate before filing a state habeas petition that would toll the running of the AEDPA limitations period, he still had ample time

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\*The magistrate judge's findings, conclusions, and recommendation are somewhat imprecise when stating at page 2 that petitioner filed his second habeas petition on July 2, 2007. As the magistrate judge later explains at page 5 and note 4, the petition was filed July 19, 2007, and the result is the same regardless which date is used.

to do so. But despite the fact that the mandate issued on September 26, 2006, petitioner did not file his first (and procedurally defective) state habeas petition until February 8, 2007.

Accordingly, the magistrate judge's findings, conclusions, and recommendation correctly recommend that this federal petition be dismissed with prejudice as time-barred under AEDPA.

**SO ORDERED.**

August 20, 2008.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE